

**Town of Milford
Zoning Board of Adjustment Minutes
June 6, 2013
Tasty Tobacco Shop LLC
Case #2013-09
Variance**

Present: Fletcher Seagroves, Chairman
Zach Tripp
Laura Horning
Bob Pichette
Kevin Taylor

Mike Thornton - Alternate
Katherine Bauer – Board of Selectmen’s representative

Absent: Paul Butler, Alternate

Secretary: Peg Ouellette

The applicant, Tasty Tobacco Shop LLC c/o Rick Fells, along with the owners, Herbert & Cheryl Hardman, of Map 19 Lot 25-2, located at 189 Elm Street Unit 6, in the Commercial district, are requesting a variance from Article VII, Section 7.06.7:E, to install a 64 SF wall sign, which is larger than 50% of the storefront’s linear measure as permitted in the “C:” district.

Minutes approved June 20, 2013

Fletcher Seagroves, Chairman, opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record, The list of abutters was read. Cheryl Hardman, owner of 189 Elm Street, was present. Rick Fells, owner of Tasty Tobacco LLC, was present. Fletcher Seagroves then invited the applicant forward to present his case.

R. Fells stated that his business needed a larger sign. He moved to his current location from the Oval. Getting customers to know his current location is difficult. The existing sign is about 4 x 4 and cannot be seen from the road.

K. Taylor said that, going into the plaza there is a sign and asked whether the applicant would have his name there or whether there was room to be on that sign.

R. Fells responded that his name is not on it and he is working with the Hardmans to do so.

Z. Tripp asked if the current sign was the maximum allowable according to the frontage.

R. Fells responded he believed it was. It is a 4 x 4 or 4.3SF sign.

F. Seagroves said 4 x 3 would be 12 SF feet and 50% would be 25 SF. He referred to the ordinance, page 196, it is 50% of the store frontage linear measurement or maximum of 100 SF, whichever is less. The applicant is asking for 64 SF which he calculated at 16 x 4. He stated he had gone down to look at the sign and agreed it was very small. One of his concerns, in looking at other signs in the mall, was that they are not as big. The applicant's current sign covers almost all the front of the building. He referred to the photo, saying the total area is 18' across and applicant wants 16'.

B. Pichette said applicant is asking for a 16-foot sign on an 18-foot store front.

R. Fells said he thought there was 26 linear feet as the 4 x 3 sign totals 12 SF.

Z. Tripp asked whether the representation of the proposed sign was accurate; whether it would be as wide as the windows.

R. Fells said just shy. He referred to the old holes from a previous sign.

L. Horning said there would be about six inches shy on either side of where the doors are.

F. Seagroves expressed concern that almost every other sign there isn't that wide, and we are trying to keep everything in conformance.

R. Fells stated the sign at the liquor store was 22'.

F. Seagroves responded that it is a state liquor store, and the state does not go by the town rules.

K. Taylor said that sign is coming down.

F. Seagroves said, looking at Hallmark and the other stores, the 12' is not going to make it.

B. Pichette asked the linear footage of the store and then read it was 18' according to the information provided.

R. Fells said he thought it was 26', but it might be 18'. The inside of the store is 25 x 65.

F. Seagroves said they were discussing frontage. In reading the code enforcement, it says subject store frontage is 25 linear feet, which would allow a wall sign of 12.5 SF, which is 50%.

L. Horning asked whether there was a way to introduce a compromise with the applicant.

B. Pichette asked if the applicant had another option.

R. Fells responded yes.

L. Horning said the applicant is talking about 6 or 8 inches shy of the window's casing on either side. She hears the Chair saying he would like to see it not quite so long, so maybe there is a way to make it less long. She understands the difficulties with the topography of the lot.

The Board members looked at the photo of the other signs in the plaza. L. Horning believed that Rent One had been before the Board. F. Seagroves said Jade Dragon had been. Z. Tripp said Jade Dragon was two units, a much larger space. F. Seagroves said Rent One was definitely not 12 SF. L. Horning said it was not, not within the ordinance and was an exception.

F. Seagroves agreed and expressed concern about getting into a sign war down there, even though every case is unique.

L. Horning said every case is unique. Looking at the layout at the mall, the applicant has a pretty good-sized entrance in comparison to the others, including the flower shop.

Z. Tripp said he read somewhere it would be LED lit. Was that backlit?

R. Fells said it would be a light that would be black in the background and a light would be illuminating "Tasty Tobacco Shop."

Z. Tripp asked if the letters would be seen at night.

R. Fells said yes.

F. Seagroves opened the meeting to public comment.

Cheryl Hardman, co-owner of the plaza, came forward concerning the mention of Rent One. She said the Tasty Tobacco store is 2,000 SF and Rent One is 2,400SF, not a big difference. As the Chairman did, she went down there, and the sign looks like a postage stamp. It is not in the regulations, but they would like conformity with a more elongated sign. When Lamy's put it up she was doubtful. She and her husband are in favor of it at their shopping center but they feel it should be more linear, to give a little more visibility.

F. Seagroves agreed the sign needs to be bigger, but how much.

C. Hardman said instead of 16, maybe 12 or 13. She didn't think it was etched in stone.

F. Seagroves said, in his personal opinion, 18 is to much.

B. Pichette said the other signs looked like they were about 8 feet long when he went by this afternoon and 2 feet high. He thought that would fit well – somewhere about 2 x 8, approximately the same size as Rent One and the one next to it.

R. Fells stated that Jade Dragon goes all the way to the roof.

F. Seagroves said it can only go up as far as the backing.

L. Horning said she thought that Jade Dragon is about 14' long. Others thought it was about 12'.

F. Seagroves said it was higher than 4 feet.

L. Horning said, in keeping with the aesthetics, what the applicant is asking is fairly reasonable and maybe asking him to go 14' is fair enough, taking a foot off either side. The state liquor store will be going.

B. Pichette said the one to the right of the liquor store is about 3 x 8-10 feet.

Melissa Grant, who works for Cherb LLC, spoke, saying the store to the right of the liquor store is a unit of only 750 SF, so the applicant's store is almost twice as big. The sign there now was put in when Lamy's moved from one side of the plaza to the other. The sign that used to be there was larger. Lamy's didn't want it larger because they already had a panel that size and had a box made to fit the panel; that is why it is an unusual sign. The height of the current sign is 4', so she doesn't see the need, maybe 3'.

L. Horning agreed, 3'.

M. Grant said Jade Dragon is two units but this is not that much less in square footage.

L. Horning said exactly, and asked how long that sign was.

M. Grant didn't know. She knew they went before the Board.

F. Seagroves said 14'.

L. Horning said when she went down there it appeared to be about 12'. She asked the dimensions.

M. Grant said the applicant's unit is 26' wide.

L. Horning asked the width of the Jade Dragon frontage.

M. Grant said she didn't know.

Z. Tripp said look at the windows.

F. Seagroves said there are 4' windows, and the doors are about 8'.

L. Horning said her point was that, aesthetically, which is what the sign ordinance and corridor are about, she agreed that 18' was a bit much, maybe limit it to 12' or 14' but personally, she would prefer 14'.

M. Grant called attention to the photo, and said you can see where the current sign plugs in and where the cord goes. That is usually covered by the sign, which shows what the original size was.

R. Fells stated his sign would cover those holes on the façade now.

L. Horning thought they probably would, even at 14'.

F. Seagroves stated they didn't know what the sign ordinance was at that time.

K. Taylor said in the proposed picture, you can still see the holes.

Z. Tripp said in the proposed picture, you would have a gap between the state liquor store sign. He addressed the Chair, saying he didn't necessarily share Laura's view. He wouldn't want the sign any larger, but the fact is that it is kind of contained within the windows of the store front.

L. Horning agreed, but also agreed with the Chair that aesthetically in keeping with the other store fronts in that mall, 18' is a little long. She would like it to go to 14'.

Z. Tripp said, the other long signs at Rent One and Hallmark have more characters as opposed to boxes. Going with something like that, with same length and same font size will look less bulky.

F. Seagroves commented that the Hallmark sign covers more than half the frontage of the building. B. Pichette stated they were not 4' high; they were all 2' to 3' high.

L. Horning said they addressed that; they would like it to go to 3’.

R. Fells stated there are signs that are higher. Jade Dragon is 5’; it goes up above the roof.

B. Pichette said there are two like that.

F. Seagroves referred to the sign ordinance which says all signs may not project above the top.

R. Fells said that 4’ is exactly where the white is.

L. Horning asked if it would set right below the roof line.

R. Fells said yes, right on the white panel, where the white stringers from the old sign come up.

Z. Tripp asked whether the wording “Lounge & Full Bar” would be on the windows.

R. Fells said it looked big because of the person doing the graphics, but the vinyl will be inside the tobacco shop.

F. Seagroves asked for further questions or comments. There were none.

R. Fells read the application into the record, at Chair’s request.

1. Granting the variance would not be contrary to the public interest because:

A larger sign is more visible and that means keeping the public interest of the residents of Milford. It would also be better visibility for the passing traffic so it can slow down into the shopping center.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

The proposed sign does not present a significant change so as to upset or undermine the character of zoning for this area of town. Granting this will help businesses and property owners in the community

3. Granting the variance would do substantial justice because:

The size of the sign would be representative of the size of the store. The harm to the community by having the sign larger than those allowed at this site is nominal, if any.

4. Granting the variance would not diminish surrounding property values:

The sign would offer better exposure to the community and draw more customers to the shop as well as the entire shopping plaza. The property values would then increase for the plaza during this tough economic time.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The special condition of the property is the natural topography of the property which hinders the visibility of the signage from the street. The plaza is set back a good distance from the street and also sits at the base of a hill.

ii) and; The proposed use is a reasonable one because:

The sign will be professionally installed and better visibility of the shop sign means better Opportunity for the business to prosper, as well as to bring more customers down in the plaza to shop at other businesses located in this plaza.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of the property because:

The signage allowed by the ordinance is too small and not reasonable for this location; this way they can advertise their store and be more competitive in business.

F. Seagroves asked for further comments from the public. There were none. He closed the public portion of the meeting.

Z. Tripp asked the applicant if the picture of the proposed sign was drawn to scale.

R. Fells stated he did not believe so; it was e-mailed to him by the sign person. He stated he believed the original sign was 18’ long.

Z. Tripp asked if the holes, for a benchmark, were at 18'.

R. Fells responded that was correct.

K. Taylor asked whether the applicant was guaranteed a spot on the sign located as you come into the plaza.

R. Fells said he is not guaranteed. It is another sign company.

M. Grant said it also goes by store square footage and she is waiting to hear on two larger units.

C. Hardman said she thought there was limited space available on the sign. There are 9,000 SF between Gold's and Tractor Supply which she hopes to rent at some time and that tenant will want space on that sign. Another tenant coming in will want space on the sign. There are only two spaces left, so Mr. Fells will be out of luck.

R. Fells said his store can be seen right from the set of lights with a bigger sign and he is not concerned if he's not on the sign at the entrance at the top of the hill.

L. Horning said it is a fair request. Not everyone can operate a business within strict conformance and the Board is there to lend relief in those situations. In her opinion, his business is a perfect example. She addressed the Chair saying she would like to strike a compromise between the Board and the applicant. She would prefer 14', but didn't know if other members would prefer 12'. She was fine with the height of the sign as long as it doesn't breach the top of the roofline.

Z. Tripp stated it can't and made a suggestion that since they discussed aesthetics and avoiding a sign war, that they use as a visual reference and say the sign be no longer than the actual windows in the store front. That way if a similar one comes up, they can apply equally.

R. Fells said that is 18'.

Z. Tripp said he had 18' being where the holes were.

R. Fells responded the holes line up with the windows, although it didn't appear so in the picture. That is why he requested 16'.

Z. Tripp commented that 16' is already narrower and he has no problem with 16'.

L. Horning said she had a problem with 16'. When looking at the entire mall it will dwarf some of the other businesses sign-wise when the state liquor store sign comes down. Aesthetically it should be 14' to 12'. She didn't know how other members felt, but she was fine with 14'. She addressed the applicant saying she hoped he understood what she was saying, by keeping it contained inside the window frame for aesthetics.

R. Fells stated that Hallmark and others also have the sign above at the entrance. He is only asking for one. He understands the 14', and if that is what the Board decides, but he's asking for 16', only two more linear feet; one on each side. It is well below the windows the change could affect the price; with 14' it might not fit the graph and will shrink his lettering.

L. Horning said she understood, but aesthetically in keeping with the rest of the building, she thought 14' is a happy medium. It's only a foot on each side; it is comparable. It still gets the maximized visibility and in keeps it within the contents of the windows, not stretched right out to the windows. So, coming down, it will not look like he is outweighing some of the others. It is in keeping with what the other stores have.

Z. Tripp clarified that the windows are 18' and he's asking for 16, but Laura is proposing is two feet less.

R. Fells said he was fine with that.

B. Pichette asked to clarify that Laura was proposing 4' x 14'.

L. Horning said yes.

F. Seagroves asked the applicant if he was okay with 14'.

R. Fells responded he was fine with 14'.

F. Seagroves went to the discussion of the criteria.

Question was raised as to when they would address the amendment. It was agreed that would be after the discussion of the criteria. The Chair said there was nothing saying it could not be brought up during the discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

L. Horning – yes. Applicant pointed out he is in a peculiar lot situation dealing with a severe handicap of the topography. He is not afforded the ability to have signage on the street. Regardless of the other shops, he is looking at a disadvantage sign-wise. It is reasonable to request a larger sign. It will not be a hindrance to the public.

Z. Tripp – He did not believe the application for a 16' long sign would contribute to over-signage in that plaza because it is 16' which is contained within 18' of the window. (other members pointed out it is only 14')

B. Pichette agreed it would not have an adverse effect. It is a sign.

K. Taylor agreed. The public interest will not be harmed.

F. Seagroves agreed. It will not be contrary to the public interest. He didn't think the public interest would have anything against a little bigger sign there. He felt what the ordinance says is a little small.

2. Could the variance be granted without violating the spirit of the ordinance?

B. Pichette – a larger sign would not threaten public welfare, safety or public health.

K. Taylor agreed. It would not violate the spirit of the ordinance. Traffic will see it coming into the plaza.

Z. Tripp agreed it would not violate the spirit of the ordinance. This is an effective use of signage and will help to attract business and growth in Milford without adversely affecting nearby public or private property.

L. Horning agreed. The spirit of the ordinance is to provide conformity. This sign is in conformity with the mall location, size and dimensions; the way the lot drops off is a handicap to visibility from the road. Granting this variance could be done without violating the spirit of the ordinance.

F. Seagroves agreed. The handbook states, and as Bob stated, they look at the health, safety and general welfare of the community. For safety, instead of a postage stamp to try to read, people would be able to see a little bigger sign.

3. Would granting the variance do substantial justice?

K. Taylor said yes. It would increase his visibility to the community. With Tractor Supply and Gold's Gym people would know he was there, but people just going into the mall would probably not know he was there with the current sign.

Z. Tripp said it would be a gain to the applicant to have the proper size sign. There is no gain to the public to deny it.

L. Horning said denying would be an injustice to the public. Granting would do substantial justice.

B. Pichette agreed. The sign cannot be seen from Elm St. and would be an injustice not to allow a larger sign.

F. Seagroves said the handbook states any loss to the individual not outweighed by gain to the public is an injustice. He didn't see public gains by refusing. He liked the idea of keeping the signs comparing the size of the store to the size of the sign.

4.. Could the variance be granted without diminishing the value of abutting property?

L. Horning said yes. Granting would have a good effect on the surrounding properties. The more business they can attract with a wider variety of options will bring substantial value to the mall area.

Z. Tripp agreed.

K. Taylor echoed agreement. It will enhance the value.

B. Pichette agreed. It will be better exposure for applicant's company and bring more customers to the mall.

F. Seagroves agreed. This could bring more business to the plaza. Someone may go down to get a cigar and notice another store there.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
- ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z. Tripp said the special conditions of the property are its distance from the main street and it is a good sight distance downhill. The sign is impossible to read from the street. All ordinances provide hardship to all property owners and it is all shared. As pointed out by a previous chairman, the majority of signs in that plaza violate the ordinance. Denying this sign would be a hardship based on the larger signs on the surrounding properties. Doesn't want a sign war. It is a reasonable sign, reasonably executed.

L. Horning agreed. No fair and substantial relationship exists between the public purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one. There was no reason to touch Question B because Question A was already satisfied. As Z. Tripp pointed out, the topography and size of the other signs all point out there is an undeniable hardship in this situation. Denial would represent an unnecessary hardship.

B. Pichette agreed with Z. Tripp and L. Horning. A business needs visibility to prosper and not doing that would be an unnecessary hardship.

K. Taylor said denying this would cause unnecessary hardship.

F. Seagroves agreed. With special conditions of the area, being lower, it is hard to see, depending where you stop at the light. Regarding the sign up above, it is nice, but he is not going to be able to get on that sign. He needs a bigger sign down on the building. Denying would be an unnecessary hardship.

L. Horning made a motion to approve, on conditional approval, that the sign be no larger than 14' x 4'.

B. Pichette agreed.

K. Taylor – yes

Z. Tripp – yes

F. Seagrove – yes

Would granting the variance not be contrary to the public interest?

L. Horning – yes

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves – yes.

Can the variance be granted without violating the spirit of the ordinance?

Z. Tripp - yes

B. Pichette – yes.

K. Taylor – yes

L. Horning – yes

F. Seagroves – yes

Would granting the variance do substantial justice?

K. Taylor – yes

B. Pichette – yes

Z. Tripp – yes

L. Horning – yes

F. Seagroves – yes

Could the variance be granted without diminishing the value of surrounding property?

L. Horning – yes

K. Taylor – yes

B. Pichette – yes

Z. Tripp – yes

F. Seagroves – yes

Would denial of the variance result in unnecessary hardship?

L. Horning – yes

Z. Tripp – yes

B. Pichette – yes

K. Taylor – yes

F. Seagroves – yes
L. Horning made a motion to approve Case 2013-09 with a condition.
K. Taylor seconded

Final Vote:

L. Horning – yes
Z. Tripp – yes
B. Pichette – yes
K. Taylor – yes
F. Seagroves – yes

Case #2013-09 was approved with the condition that the sign be no larger than 14'x4'.

The Chair reminded the applicant of the 30-day appeal period and informed him he should check with the office as to when he may start.